

1. Requested Motion:

To introduce the Ordinance 14-05, Outdoor Display Ordinance and set the public hearing date for September 4th at 6:30PM.

Meeting Date: August 18, 2014

Why the action is necessary:

State law requires the title of an ordinance to be read at two separate meetings before adoption.

What the action accomplishes:

2. Agenda:

☐ Consent
☐ Administrative
☒ Public Hearing

3. Requirement/Purpose:

☐ Resolution
☒ Ordinance
☐ Other Special Events Permit

4. Submitter of Information:

☐ Council
☒ Town Staff – Com. Dev.
☐ Town Attorney

5. Background:

The DOWNTOWN zoning district has specific regulations regarding outdoor display of merchandise, as found in LDC Sec. 34-678. In early 2013, Code Enforcement conducted an inventory of merchants utilizing outdoor display of merchandise, and found dozens who had not obtained their annual permit required by LDC Sec. 34-678(e)(5). As a result of the many Notices of Violation that were sent to merchants, staff conducted meetings with a group that became known as the “retail merchants working group” to clarify the language in the ordinance, and to lessen the burden on Code Enforcement by removing unnecessary restrictions on number of items and restrictions on display types.

A proposed outdoor display ordinance language was reviewed by the LPA on October 8, 2013, who remanded the ordinance back to the working group for additional revisions. The proposed language was prepared for the March 11, 2014 LPA agenda, and was continued to June 10, 2014 at the March meeting. On June 10th, the LPA recommended approval of the requested language, provided that references to “enclosed outdoor dining” were removed, along with references allowing dining in public Right-of-Way along Old San Carlos as being permitted by right.

Exhibits

Tab a – Proposed Ordinance 14-05, Outdoor Display
Tab b – LPA Resolution 14-05 (unsigned)
Tab c – Draft LPA minutes of June 10, 2014

6. Alternative Action:

Decline to introduce the ordinance

7. Management Recommendations:

Introduce the ordinance and set the public hearing date for Ordinance 14-05 for September 4, 2014.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Park & Recreation Director	Town Clerk
				JRO		

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

ORDINANCE 14-05

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE I, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "IN GENERAL" AMENDING SECTION 34-2, "DEFINITIONS" BY ADDING A DEFINITION FOR "ENCLOSED MERCHANDISE AREA;" AMENDING CHAPTER 34, ARTICLE III, DIVISION 5, SUBDIVISION II, "DOWNTOWN ZONING DISTRICT;" AMENDING SECTION 34-678, "OUTDOOR DISPLAY AND SALES OF MERCHANDISE AND FOOD;" BY DELETING AND REVISING VARIOUS REQUIREMENTS RELATING TO SIZE, LOCATION AND NUMBER OF OUTDOOR DISPLAY ITEMS; BY PROVIDING REGULATIONS FOR "ENCLOSED MERCHANDISE AREAS;" BY REVISING REQUIREMENTS FOR PORCHES AND PATIOS UTILIZED FOR OUTDOOR DISPLAY; AND BY PROVIDING REGULATIONS RELATING TO EXISTING NONCONFORMING OUTDOOR DISPLAY BUSINESSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34 of the Town of Fort Myers Beach Land Development Code, entitled "Zoning Districts, Design Standards and Nonconformities," is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethroughs.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor
Alan Mandel
Summer Stockton

Dan Andre, Vice Mayor
Rexann Hosafros

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2014, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Anita T. Cereceda, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
BUCHANAN INGERSOLL & ROONEY
FOWLER WHITE BOGGS, Town Attorney

EXHIBIT "A"

Section 34-2. *Definitions.*

Enclosed merchandise area. Enclosed merchandise area means that area within a conventional building including that area adjacent and accessory to a conventional building where the conventional building and adjacent area are under a common engineered roof and which area is secure from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as enclosed merchandise area. The design of the adjacent areas shall be consistent with Land Development Code Commercial Design Standards Section 34-677.

Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) ***Generally.*** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) ***Purpose.*** The purpose of these regulations is to enhance the pedestrian environment of the town's business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

(c) ***Allowable locations for outdoor activities.*** Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Display Type	Location		
	PRIVATE PROPERTY (between store & street)	PUBLIC PROPERTY (Times Square pedestrian plaza)	
	On porch	On patio	see (f)
MERCHANDISE , as further limited by other provisions of § 34-678:			
Vending carts – see (d)(1)	no	YES <u>no</u>	no
Clothing racks – see (d)(2)	YES	no	no
Specialized displays – see (d)(3)	YES	YES <u>no</u>	no
Mannequins – see (d)(4)	YES	YES <u>no</u>	no
Tables/shelves – see (d)(5)	YES	no	no
Freestanding displays – see (d)(6)	YES	YES <u>no</u>	no
DINING:			
Vending carts – see (d)(1)	no	YES <u>no</u>	no
Dining tables – see (d)(7)	YES	YES	YES

(d) Enclosed merchandise areas. Enclosed merchandise areas are exempt from this section except for the requirement that all merchandise and materials must be removed from the adjacent accessory area into the conventional building within twelve (12) hours of issuance of a tropical storm or hurricane watch that includes the DOWNTOWN District. Retail store and personal services uses (permitted uses in the DOWNTOWN District) are permitted in the enclosed merchandise area.

(e) Types of outdoor displays.

- Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off island storage area. Figure 34-9 shows two suggested depicts vending cart designs.



Figure 34-9

- Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows depicts a typical clothing rack.



Figure 34-10

- (3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-11 shows depicts a specialized display rack.

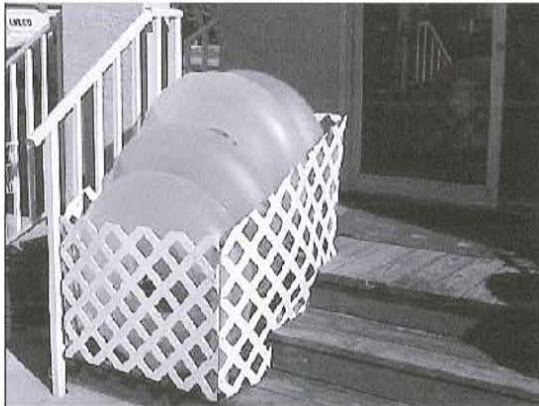


Figure 34-11

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-12 shows depicts a typical freestanding mannequin.



Figure 34-12

- (5) **Tables or freestanding shelves** are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. Figure 34-13 shows depicts a typical freestanding table with merchandise.



Figure 34-13

- (6) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products. Figure 34-14 shows depicts typical freestanding product displays.



Figure 34-14

- (7) **Dining tables** are used to serve food and beverages to the public. Figure 34-15 shows depicts typical dining tables on the Times Square pedestrian plaza.



Figure 34-15

(f) **PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables.**

Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or (but not on a patio), as defined in this subsection. ~~No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.~~

(1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:

- a. **Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
- b. **Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

(2) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display types described in subsection (d):

- a. **Art** (prints, sculpture, etc.): 1, 3, 5, 6
- b. **Bathing suits and swimwear:** 1, 2, 4
- c. **Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
- d. **Beach towels:** 1, 2, 3, 5
- e. **Beach toys, rafts, and floats:** 1, 3, 5
- f. **Clothing:** 1, 2, 4, 5
- g. **Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
- h. **Kites and windsocks:** 1, 6
- i. **Lawn and garden accessories:** 1, 6
- j. **Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
- k. **Merchandise not specifically listed:** 1, or on permitted display type for the most, but similar item to listed merchandise.

(3) **Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

(4) **Additional rules for outdoor displays of merchandise.**

- a. A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
- b. Merchandise that is displayed outdoors must be available for sale inside the store and the point of sale must be indoors.
- c. All outdoor displays must be brought indoors during any hours that the business is not open, ~~except as provided for vending carts in subsection (d)(1).~~
- d. Outdoor display may not be subleased to a separate business and is only allowed for the principal tenant of the building.
- e. Outdoor displays may contain no business or product identification signage whatsoever; each display may have one 4 inch by 6 inch sign to display prices.
- e. f. All outdoor displays must be non-motorized and movable by hand and may be no

taller than 10 feet.

£.g. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).

(4) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.

(5) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.

- a. Permits may be issued for up to one year and shall expire each year on September 30.
- b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
- c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
- d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).

(g) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:

- (1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.
- (2) **Who may operate.** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
- (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
- (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
- (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
 - (6) Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 - (7) Restrictions on the extent to which food not available in the abutting business may be sold;
 - (8) Requirements for keeping the area surrounding the tables or carts from debris and refuse at

- all times;
- (9) Insurance requirements;
 - (10) Payment of fees established by the town for vending rights;
 - (11) Limitations on leasing of vending rights, if any; and
 - (12) Other reasonable conditions as determined by the town, including full approval right over the design of umbrellas, carts, tables, etc.
 - (13) Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

(h) Existing Nonconforming Outdoor Display Businesses. Businesses located in the Downtown Zoning District that were in existence on or before January 1, 2014 and did not meet the technical requirements for an Outdoor Display Permit shall be permitted to continue in business regardless of whether they previously or currently meet the specific requirements for outdoor display outlined above, subject to the following conditions:

- (1) The business must demonstrate that it was in existence at its current location on or before January 1, 2014;
- (2) The business must apply for and be issued and pay for an annual permit;
- (3) The business must remain at its current location and may only move or relocate to a legally conforming location;
- (4) The business can only be sold or transferred to another person or entity if the business is relocated to a conforming location and otherwise meets all requirements for Outdoor Display;
- (5) The business cannot increase in area or number of displays; and
- (6) If the business is closed or ceases to do business for a period of six (6) months or more, the business can only re-open in a conforming location.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2014-005
AMENDMENTS TO OUTDOOR DISPLAY REGULATIONS IN THE LAND DEVELOPMENT CODE
CHAPTER 34, ARTICLE III, DIVISION 5

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under the LDC, the LPA conducted a public hearing on March 11, 2014 to consider a proposed Town Ordinance amending certain sections of the LDC, which is attached hereto as *Exhibit A* and is hereby incorporated by reference; and

WHEREAS, at the March 11, 2014 LPA meeting, the LPA continued the hearing to a date certain of June 10, 2014; and

WHEREAS, at the June 10, 2014 LPA meeting, the LPA considered the proposed amendments to the Outdoor Display regulations; and

WHEREAS, the aforesaid Ordinance, if passed, would amend regulations relating to outdoor display and sales of merchandise and food in the DOWNTOWN zoning district, as is more fully set forth in the proposed Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council **APPROVE** and adopt the proposed Town Ordinance amending Chapter 34, Article I, Section 34-2, "Definitions," and Article III, Division 5, Subdivision II, "DOWNTOWN Zoning District," Section 34-678 in the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed ordinance is in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed ordinance with changes as noted below.
2. The LPA hereby recommends the following revision(s) to the proposed ordinance:
 - a. Remove all proposed amendments referencing "enclosed dining area"
 - b. Remove proposed addition of "and Old San Carlos Blvd." in Table 34-4.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Bodenhafer** and seconded by LPA Member **Shamp**, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	AYE
Al Durrett	AYE	John Kakatsch	EXCUSED
Jane Plummer	AYE	Chuck Bodenhafer	AYE
Jim Steele	EXCUSED		

DULY PASSED AND ADOPTED THIS **10th** day of **JUNE, 2014**

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

EXHIBIT "A"

Section 34-2. *Definitions.*

Enclosed dining area. Enclosed dining area means that area within a conventional building including the area adjacent and accessory to a conventional building where the building and adjacent area are under a common engineered roof and which are is secured from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as an enclosed dining area. The design of the adjacent area shall be consistent with the land Development Code Commercial Design Standards 34-677.

Enclosed merchandise area. Enclosed merchandise area means that area within a conventional building including that area adjacent and accessory to a conventional building where the conventional building and adjacent area are under a common engineered roof and which area is secure from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as enclosed merchandise area. The design of the adjacent areas shall be consistent with Land Development Code Commercial Design Standards Section 34-677.

Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) Generally. Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) Purpose. The purpose of these regulations is to enhance the pedestrian environment of the town's business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

(c) Allowable locations for outdoor activities. Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Display Type	Location		
	PRIVATE PROPERTY (between store & street)	PROPERTY	PUBLIC PROPERTY (Times Square pedestrian plaza and Old San Carlos Blvd.)
	On porch	On patio	see (f)
MERCHANDISE , as further limited by other provisions of § 34-678:			
Vending carts – see (d)(1)	no	YES <u>no</u>	no
Clothing racks – see (d)(2)	YES	no	no
Specialized displays – see (d)(3)	YES	YES <u>no</u>	no
Mannequins – see (d)(4)	YES	YES <u>no</u>	no
Tables/shelves – see (d)(5)	YES	<u>no</u>	no
Freestanding displays – see (d)(6)	YES	YES <u>no</u>	no
DINING:			
Vending carts – see (d)(1)	no	YES <u>no</u>	no
Dining tables – see (d)(7)	YES	YES	YES

(d) Enclosed merchandise areas. Enclosed merchandise areas are exempt from this section except for the requirement that all merchandise and materials must be removed from the adjacent accessory area into the conventional building within twelve (12) hours of issuance of a tropical storm or hurricane watch that includes the DOWNTOWN District. Retail store and personal services uses (permitted uses in the DOWNTOWN District) are permitted in the enclosed merchandise area.

(e) Enclosed dining areas. Enclosed dining areas are exempt from this section except for the requirement that all tables, seats and materials must be removed from the adjacent accessory area into the conventional building within twelve (12) hours of issuance of a tropical storm or hurricane watch that includes the DOWNTOWN District. “Restaurant” (permitted use in the DOWNTOWN District) is permitted in the enclosed dining area. Serving of alcoholic beverages is permitted subject to compliance with LDC Sections 34-1261-1264.

(f) Types of outdoor displays.

- (1) ~~Vending carts are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9 shows two suggested depicts vending cart designs.~~

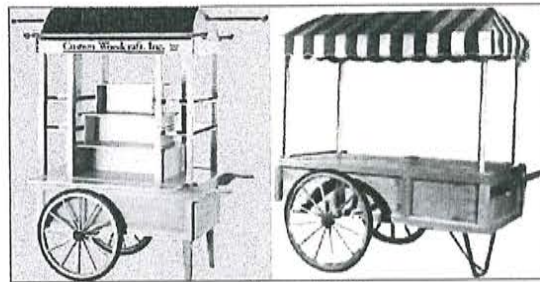


Figure 34-9

- (2) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows depicts a typical clothing rack.



Figure 34-10

- (3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-11 shows depicts a specialized display rack.

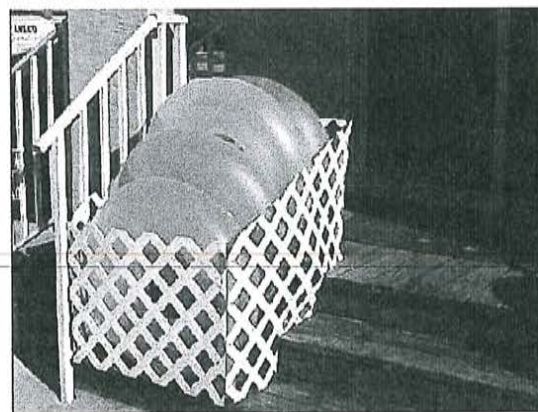


Figure 34-11

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-12 shows depicts a typical freestanding mannequin.



Figure 34-12

- (5) **Tables or freestanding shelves** are limited to a 2 foot by 8 foot area or a 4 foot by 4 foot area, and may not be more than 3 feet in height. Figure 34-13 shows depicts a typical freestanding table with merchandise.

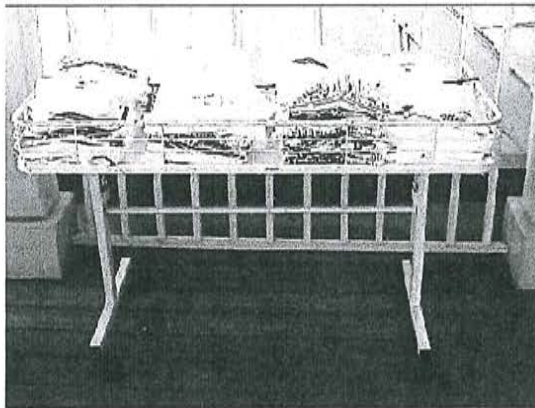


Figure 34-13

- (6) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4 foot by 8 foot area or with a maximum of 7 individual products. Figure 34-14 shows depicts typical freestanding product displays.



Figure 34-14

- (7) **Dining tables** are used to serve food and beverages to the public. Figure 34-15 shows depicts typical dining tables on the Times Square pedestrian plaza.



Figure 34-15

(g) **PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables.** Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or (but not on a patio), as defined in this subsection. ~~No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.~~

- (1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:

- a. **Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
- b. **Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this

code.

(2) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display types described in subsection (d):

- a. **Art** (prints, sculpture, etc.): 1, 3, 5, 6
- b. **Bathing suits and swimwear:** 1, 2, 4
- c. **Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
- d. **Beach towels:** 1, 2, 3, 5
- e. **Beach toys, rafts, and floats:** 1, 3, 5
- f. **Clothing:** 1, 2, 4, 5
- g. **Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
- h. **Kites and windsocks:** 1, 6
- i. **Lawn and garden accessories:** 1, 6
- j. **Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
- k. **Merchandise not specifically listed:** 1, or on permitted display type for the most, but similar item to listed merchandise.

(3) **Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

(4) **Additional rules for outdoor displays of merchandise.**

- a. A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
- b. Merchandise that is displayed outdoors must be available for sale inside the store and the point of sale must be indoors.
- c. All outdoor displays must be brought indoors during any hours that the business is not open, ~~except as provided for vending carts in subsection (d)(1).~~
- d. Outdoor display may not be subleased to a separate business and is only allowed for the principal tenant of the building.
- ~~d.~~ e. Outdoor displays may contain no business or product identification signage whatsoever; each display may have one 4 inch by 6 inch sign to display prices.
- e. f. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
- ~~f.g.~~ Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).

(4) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.

(5) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.

- a. Permits may be issued for up to one year and shall expire each year on September 30.
- b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
- c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
- d. Permits may include modifications to the standards in this section to better accomplish the

purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.

- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).

(f) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:

- (1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6), Old San Carlos Boulevard, and other locations if explicitly approved by the town council.
- (2) **Who may operate.** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
- (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
- (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
- (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
 - (6) Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 - (7) Restrictions on the extent to which food not available in the abutting business may be sold;
 - (8) Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
 - (9) Insurance requirements;
 - (10) Payment of fees established by the town for vending rights;
 - (11) Limitations on leasing of vending rights, if any; and
 - (12) Other reasonable conditions as determined by the town, including full approval right over the design of umbrellas, carts, tables, etc.
- (13) Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

(g) Existing Nonconforming Outdoor Display Businesses. Businesses located in the Downtown Zoning District that were in existence on or before January 1, 2014 and did not meet the technical requirements for an Outdoor Display Permit shall be permitted to continue in business regardless of whether they previously or currently meet the specific requirements for outdoor display outlined above, subject to the following conditions:

- (1) The business must demonstrate that it was in existence at its current location on or before January 1, 2014;
- (2) The business must apply for and be issued and pay for an annual permit;
- (3) The business must remain at its current location and may only move or relocate to a legally conforming location;

- (4) The business can only be sold or transferred to another person or entity if the business is relocated to a conforming location and otherwise meets all requirements for Outdoor Display;
- (5) The business cannot increase in area or number of displays; and
- (6) If the business is closed or ceases to do business for a period of six (6) months or more, the business can only re-open in a conforming location.



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, June 10, 2014

I. CALL TO ORDER

Meeting was called to order at 9:02 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
James Steele – excused.
Hank Zuba

LPA Attorney: Derek Rooney
Staff Present: Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Chair Zuba

IV. MINUTES

A. Minutes of May 13, 2014

MOTION: Vice Chair Shamp moved to approve the Minutes for May 13, 2014 as presented; second by Ms. Plummer.

Vice Chair Shamp noted a typographical error on Page 7 - "...creation of an ~~aseending~~ area..." to "... a sending area..."

VOTE: Motion approved; 6-0 (Mr. Steele was excused).

A. CMP2013-00001 Seagrape Subdivision

Chair Zuba opened the Public Hearing.

Matt Uhle, Attorney representing the Applicant, noted the Staff Report was thorough and accurate and offered an overview of the purpose and the mechanics of the Applicant's request. He described the subject property as 40 platted lots in the Seagrape subdivision. He noted the subject property was identified on the Future Land Use Map (FLUM) as wetlands; however, it was not completely a wetland. He claimed in 2010 the South Florida Water Management District (SFWMD) completed a jurisdictional analysis of the subject property revealing that 27% was uplands and 12% was 'other surface waters'. He discussed the jurisdictional analysis performed by SFWMD; and the Applicant's filing of a 40 Minimal Use Determinations (MUD) (one for each platted lot) and the denial by the LPA; and the appeal to Town Council. He explained how the Applicant postponed the appeal to Council pending the outcome of a Comprehensive Plan Amendment using transfer of development rights (TDRs). He talked about TDR programs in general, and stated that if the TDRs were approved and properly implemented that the Town would receive title to all 40 platted lots at no cost; therefore, the residents would be assured there would be no building on the subject lots. The proposal would require the Applicant to identify the receiving areas through the development zoning process through a public hearing process. He highlighted the following items as they pertained to the subject proposal:

- The subject proposal did not permit "anything to go anywhere"; it was limited in terms of receiving areas and did not have a commercial component.
- The subject proposal was not viewed as "an embryo for some sort of an island-wide system" or a "broader process".
- The receiving areas would be identified solely through the planned development zoning process which meant public hearings, notice, etc.; and the Town would not be obligated to approve any particular application that came in front of them and this was a substantial concession on the Applicant's part.
- The 40 units were consistent with the MUDs the Applicant applied for and that they clearly legally entitled to under the criteria in the Comprehensive Plan.
- Conservation easement on a portion of the property – Town does not own the conservation easement rather it was owned by the State of Florida DEP and it did not prohibit all development on the property. He noted written authorization from the owner was required for development on the easement.
- 'Double-dipping' by including density included in the Seagrape Bay condominium – the lots included in the Jameson property that were initially contemplated to be part of that condominium were part of the Phase III which was never built and was used as the 'open space' for a hypothetical phase that was never constructed.

Attorney Uhle explained the Applicant believed their proposal would benefit all the parties and requested approval as recommended by Town staff.

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Mr. James Jameson, Applicant, offered personal information and a brief outline of his work experience in the way of an introduction. He described his involvement with the acquisition of the subject property and what he saw as benefits to the Town and the residents if the proposal was approved. He stated he would not build on the subject property; and that 6.5 acres would be handed to the Town in the same state as which he purchased the property.

Vice Chair Shamp questioned the subject property details as "Town of Fort Myers Beach, Vacant Residential" for 2008; however, in her research of the Lee County records the codes indicated 'sewage disposal, waste lands' and 'mangrove' for each year they showed (2007-2014).

Attorney Uhle explained that particular change was not done at his client's initiative and he did not know how the classification changed from vacant residential to 'sewage disposal, waste lands'.

Discussion ensued regarding the County's current valuation of the subject property.

Vice Chair Shamp noted Lee County's TDR program was 'one unit per five acres' for wetlands.

Attorney Uhle acknowledged the County's program was different and explained his client was proposing something different which was necessary due to the platted lots.

Discussion ensued regarding the classification of 'wetlands'; the County's program; platted lots versus un-platted lots/acreage; Collier County's TDR programs as it pertained to urban fringe and agricultural; and whether or not the proposed TDRs were unique.

Mr. Jameson explained the low property taxes mentioned earlier were for an adjoining piece of property that belonged to the Mango Street apartments; and added the subject property from 2002 until a year ago was classified on his tax bills as "vacant residential".

Attorney Uhle stated the subject property was platted in 1919.

Chair Zuba questioned if it was Attorney Uhle's contention that 40 units could be built on the subject property.

Attorney Uhle reported it was his contention that the Comprehensive Plan contemplated that each unit was entitled to a Minimum Use Determination.

Chair Zuba questioned the Applicant's belief that the conservation easement could be done away with easily.

Attorney Uhle reviewed his views that the conservation easement could be done away with easily since the Town did not own the subject easement and it belonged to the DEP [which covered about half of the platted lots].

Discussion ensued regarding the conservation easement.

Planning Coordinator Overmyer presented comments on behalf of the Town of Fort Myers Beach for the CMP2013-00001 Seagrape Subdivision request. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site.

- Policy 4-C-8: The density of residential or hotel/motel units being transferred was based upon the allowable density levels in the category from which the density was being transferred; the transfer was approved through the planned development rezoning process; and binding permanent restrictions were placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.
- New Policy 6 - Staff recommended the transfer was to be approved through the planned development rezoning process for the sending and receiving parcel; and the application of the TDR Overlay on the Future Land Use Map shall be an alternative to the process described in Policy 4-B-15.
- Policy 4-B-15 (Proposed)
 - The Transfer of Development Rights (TDR) Sending Area Overlay is an environmentally sensitive area consisting of 40 platted lots of record within the Seagrape Subdivision.
 - Dwelling units may be transferred from lots within this Overlay area to any parcel in the Pedestrian Commercial, Boulevard, or Mixed Residential Future Land Use Map categories within the Town of Fort Myers Beach, regardless of the maximum density that would otherwise be permitted by the Future Land Use Map category for the receiving parcel, upon compliance with the procedures set forth below in order to create a net environmental benefit to the Town.
 - Upon conveyance of a lot or lots in the Transfer of Development Rights Sending Area Overlay by warranty deed to the Town which deed shall contain a restriction that the property shall not be developed.
 - The Town will issue a TDR certificate to the property owner for an equal number of TDR units. The TDR certificate to the property owner for an equal number of TDR units. The TDR certificate is assignable or transferable through the process described below.
 - TDR receiving areas may only be designated through the use of the planned development zoning process for the receiving parcel.
 - TDRs may be used to transfer either residential or hotel/motel units. The number of hotel/motel units which may be transferred will be computed using the hotel/motel density equivalency factors in the Land Development Code for the receiving parcel.
 - Rezoning applications which contemplate the use of TDRs must identify the number of TDRs requested and must include either TDR certificates or written authorization from a property owner in the TDR Sending Area Overlay authorizing the use of the requested number of TDR units.
 - All planned development zoning approvals which contemplate the use of TDRs must specify the number of approved TDR units.
 - Development order applications for projects which include the use of TDRs must include valid TDR certificates for the requested number of TDR units.

He indicated that the relevant Comprehensive Plan policies were:

- Policy 5-A-5: due to the physical constraints of its coastal location, the Town of Fort Myers Beach commits to a future policy of no increase in the net development capacity (island-wide) that would be allowed by the Fort Myers Beach Comprehensive Plan.
- Policy 6-B-5: development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to scenic values for the benefit of future generations.
- Policy 6-B-9 (Acquisition of Additional Sites): the Town would strive to expand opportunities for conservation and public appreciation of natural resources through acquisition of additional areas with rare or unique ecological or botanical features or which provide access to such areas.
- Objective 6-D (Wetlands): preserve all remaining wetlands; protect them from further degradation; and improve their condition and natural functions.

He reported staff recommended that Town Council create a Policy 4-B-15 and amend existing Policy 4-C-8 concerning transfer of development rights; and the Future Land Use Map should also be amended to designate the subject property as a TDR Sending Area.

Mr. Kakatsch questioned the potential use of the subject property if acquired by the Town.

Planning Coordinator Overmyer explained the potential uses for the subject property would depend upon a decision by Town Council.

Discussion was held concerning potential uses for the subject property if acquired by the Town.

Mr. Durrett questioned if the TDRs could be utilized in Lee County.

Planning Coordinator Overmyer explained the TDRs could only be used in the Town of Fort Myers Beach and were not transferable outside the Town's jurisdiction.

Vice Chair Shamp questioned the density for wetlands.

Planning Coordinator Overmyer reported the Comp Plan density was one unit per 20 acres.

Discussion was held concerning the 1984 FLUM classification of wetlands for the subject property; the wetlands designation in the Comprehensive Plan by the Town; transfer of density and zoning districts; Policy 4-C-8; and the process of adopting small-scale Comprehensive Plan amendments per State statute as it pertained to text changes.

LPA Attorney Rooney noted there could be a text change corresponding to the small-scale amendment.

Discussion continued regarding the process of adopting small-scale Comprehensive Plan amendments per State statute as it pertained to text changes.

Planning Coordinator Overmyer noted the transfer of density could go to Pedestrian Commercial, Boulevard or Mixed Residential categories.

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Discussion ensued concerning the potential transferable density to the various Future Land Use Map categories [Pedestrian Commercial, Boulevard or Mixed Residential]; and staff reviewed the background of the subject request such as but not limited to the Applicant's filing of a MUD, and the conservation easement.

Ms. Plummer discussed the existing platted map of the subject property and the potential development of the subject site.

Planning Coordinator Overmyer reviewed how Town Council would have the ability to approve setbacks, height, and other provisions of a project through planned development rezoning.

Discussion was held regarding the LPA's denial of MUDs on the subject property in 2012.

Vice Chair Shamp pointed out there were easements other than the FDEP easement on the subject property.

Discussion was held concerning 'proximity', receiving areas, and sending areas.

Planning Coordinator Overmyer reviewed areas within the Pedestrian Commercial, Boulevard or Mixed Residential districts in the Town where the potential transferable density could be used.

Discussion continued regarding 'close proximity'; and the 'hotel/motel multiplier' as it related to unit size.

Public Comment opened.

Daniel Hughes, resident, explained that most of his questions were already raised. He discussed his belief that some of the assumptions were erroneous such as but not limited to the right to develop 40 units, the conservation easement, and the 40 units under the MUD. He indicated his view that the LPA was being asked to consider an item that was a moot issue. He discussed the 'proximity' matter and questioned the propriety/legality of a Comp Plan amendment that dealt with one specific property owner's property and not a general policy.

Tom Babcock, resident, echoed the comments of Mr. Hughes. He discussed his view that the issue was extremely important to the Town; that before a small-scale Comp Plan amendment the Town should create a true TDR policy; that legal encumbrances should be removed before any discussion of a TDR; and the TDR policy should not be established based upon one parcel. He requested the LPA deny the Applicant's request and move forward with a very restrictive TDR policy.

Jay Light, resident, reported he would prefer to see the Town own the subject property and do nothing to the property.

Annie Babcock, resident, noted the matter impacted the entire island. She claimed the request did not address specific issues in a written form; and discussed her view on TDRs and the need for an overall TDR policy. She reviewed her research on TDR programs; Lee County's TDR program; reduction of development in high hazard zones; designated receiving units; and reducing coastal development on barrier islands (high hazard zones). She questioned if a TDR policy should even be used on a barrier island.

Pete Yeatman, resident, explained why he did not support approval of the Applicant's request.

Tracey Gore, resident, reported the previous owner of the subject property had requested a Zoning Verification Letter and received 'no density', and then in turn sold the property to Mr. Jameson. She noted an attempt in 2003 to build on the subject property which was denied; and during that attempt the property owner did try to abate the conservation easement but failed. She reported in 2010 the property owner requested a determination letter from SFWMD for the subject property and she reviewed highlights of the letter such as but not limited to 3.85 acres of the 6.25 acres were wetlands. She added that the property owner had advertised the individual lots for sale on the subject parcel. She mentioned that all the criteria listed within the LDC had to be met for transfer of density. She requested the LPA deny the request since it was not in the public's interest.

Jack Green, resident, stated he concurred with the previous speakers and supported their comments.

David Zak, resident, reported the property owner had been advertising property at 2500 Estero Boulevard as having the capability of containing a 120 unit hotel. He suggested the Applicant should go ahead and obtain the development order(s) necessary for the subject property and then come back to the Town to discuss transfer of development rights. He pointed out the subject property was platted in 1919 and there was no dedication. He asked for denial of the applicant's request.

Planning Coordinator Overmyer reported he received emails from the public as follows and read the contents of the emails:

- Dave & Bonnie Ennis - asked for denial of the applicant's request.
- John & Linda Vredenburg - asked for denial of the applicant's request.
- Tim & Sara Horvatich - asked for denial of the applicant's request.

Public Comment closed.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – discussion with Applicant; Mr. Kakatsch – discussion with Applicant; Chair Zuba – discussion with Applicant; Mr. Steele – was excused; Ms. Plummer – discussion with Applicant; Vice Chair Shamp – see letter she submitted and site visit; Mr. Bodenhafer – discussion with Applicant.

Vice Chair Shamp made a recommendation of denial to the LPA for the CMP2013-00001 Seagrape Subdivision request and to make a recommendation to Council that they not approve the request. She discussed the basis for her recommendation such as but not limited to issues with proximity, not being in the best interest of the residents, and the allowable density levels.

Mr. Durrett questioned if the Town currently owned any TDRs.

Planning Coordinator Overmyer responded in the negative.

Chair Zuba discussed why he did not support the recommendation by staff.

Mr. Kakatsch explained he preferred to see just 40 units approved for transfer and to see where they were going; and how the Town appeared to be in a 'redevelopment' stage, the need for development, and a tax base.

MOTION: Mr. Bodenhafer moved to recommend denial of the CMP2013-00001 Seagrape Subdivision request and to make a recommendation of denial to Council and include the Findings of Fact; and

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendment to the Town Comprehensive Plan DOES NOT qualify as a small scale amendment pursuant to the requirements of Section 163.3187, Florida Statutes, for the following reasons:
 - a. the proposed amendment DOES involve a use of 10 acres or fewer; and
 - b. the cumulative annual effect of the acreage for all small scale developments adopted by the Town of Fort Myers Beach WILL NOT exceed a maximum of 120 acres in a calendar year; and
 - c. the proposed amendment DOES involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.
 - d. the property that is the subject of the proposed amendment IS NOT located within an area of critical state concern; and
2. It IS NOT in the best interest of the health, safety and welfare of the Town's residents and property owners for the Town Council to make this change to the FLUM and such change IS NOT necessary to provide for orderly future growth of the community, for the following reasons:
 - a. The proposed amendment will likely have a NEGATIVE impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional

elements: increases impacts in VE flood zone by moving density from AE flood zone; and

b. increases intensity in VE flood zone; and

3. It is further recommended that, in accordance with the requirements of Section 163.3187, Florida Statutes, if this proposed change to the FLUM is made by the Town Council, that the Town Council direct the Town Staff to send copies of the notice of hearings and ordinance containing the amendment to the Town Future Land Use Map to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

SECOND: Vice Chair Shamp.

VOTE: Motion approved; 5-1 (Mr. Steele was excused; Mr. Kakatsch dissenting).

Public Hearing closed.

B. DCI2013-0002 Matanzas Inn CPD Amendment

Chair Zuba opened the Public Hearing.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Chair Zuba – site visit; Mr. Steele – was excused; Ms. Plummer – Applicant called her to see if she had any questions; Vice Chair Shamp – site visit; Mr. Bodenhafer – site visit with Applicant.

LPA Attorney Rooney swore in the witnesses.

Gerald Murphy of Murphy Planning offered a brief overview of his education and background as it pertained to planning and law. He stated he was “pretty much” in agreement with the Staff Report except for one recommendation of denial for a deviation #6 on a technical basis [parking space]. He gave presentation on the request for the Matanzas Inn Resort and reviewed the following:

- A number of small requests regarding the amendment of an existing CPD – to remove the Old San Carlos parcel; to bring in a platted lot that was proximate to the existing parcels; to redevelop an area [indicated on the display screen] into parking and transfer the four dwelling units to the main parcel and convert those to guest units for hotel/motel purposes at the conversion factor of 3 guest units per 1 dwelling unit.
- Deviation #4 to be continued from the previous resolution to allow the guest units to have a 1,000 square foot average.
- Revise the phasing plan according to importance dictated by the market.
- Elevations (left, rear, right, front), Phase A where the office currently existed, Phase B2, Phase C, and Phase D.

- Deviation from Chapter 30 to adopt a unified sign package, signs on the property were not in conformance with the Town's sign plan, and requested sign package should be adopted for the resort.
- Deviation to carry forward the parking deviations that the property received at approximately the time of the Town's incorporation; he recommended language for Deviation #6 – add language indicating “*with dimensional regulations allowing 90° parking spaces, 16' deep, and 8.5' wide, and a 2-way drive aisle 19' wide*”.

Vice Chair Shamp questioned if ‘open-container’ was proposed for the entire property.

Gerald Murphy responded in the affirmative.

Vice Chair Shamp questioned why the request included ‘open-container’ for the parking lot area.

Gerald Murphy explained the Applicant was attempting to redevelop the property as a ‘composite resort’. He noted the parking was proposed to move forward away from the canal and most of the current uses for ‘open-container’ areas fronted the canal.

Vice Chair Shamp questioned Mr. Murphy regarding conditioning approval with no alcohol allowed in the parking area.

Mr. Murphy stated he would be open to that condition; however, he suggested enforcement might be complicated. He explained they were not requesting any changes to the uses for the docks from what had been previously approved.

Discussion was held the density multiplier; commercial uses as allowed (Exhibit G); potential second story within FEMA regulations; deviation #6 from Town standards; provisions for landscaping improvements and open space; and deviation #2 for use of canal and street.

Vice Chair Shamp questioned if there was consideration given to mitigate impact into the residential area from the commercial effects.

Mr. Doug Speirn-Smith, owner of Matanzas Inn, explained they worked to orient noise away from the neighbors. He added that they had an indoor/outdoor restaurant with covered and uncovered music; and were committed to keeping “*it modest*”. He noted that during the review process the staff had requested he increase buffers along Crescent Street and to set the buildings away from Crescent Street a little bit to allow for flexibility in the right-of-way and had taken that into account to meet the standards of the downtown core.

Ms. Plummer questioned if the subject property would have a sidewalk (Condition #14).

Mr. Murphy noted the sidewalk was in the Town's long-range plan and when it occurred there would be space for that sidewalk.

Discussion was held regarding Condition #12.

Planning Coordinator Overmyer presented comments for the DCI2013-0002 Matanzas Inn CPD Amendment request on behalf of the Town of Fort Myers Beach. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- Remove a parcel of land (the 'Old San Carlos Parcel') from the existing CPD;
- Include a platted lot ('Lot 15') into Parcel B;
- Convert the 4 existing dwelling units (located on Lot 15) to 12 hotel/motel guest units;
- Parking parcel – remove three spaces from the prior plan (Parcel B); providing 22 spaces in Parcel C;
- Pre-disaster build-back to mitigate storm loss before the storm occurs;
- Restaurant – some enclosed and some patio portions;
- Standards for approval of a planned development rezoning found in Section 34-85 of the LDC regulations:
 - *a. Whether there exists an error or ambiguity which must be corrected.*
Staff does not find that any errors or ambiguities exist surrounding the subject property and its zoning category that require correction; except on parcel needed to be removed from the CPD boundaries.
 - *b. Whether there exist changed or changing conditions which make approval of the request appropriate.*
The changing condition that exists on the subject property which supports the applicant's request for amending the CPD is the addition and sale of property. The 'Old San Carlos Parcel' was sold to a separate owner in the spring of 2013 and is now being considered as part of a separate zoning action. Additionally, the property owner has acquired Lot 15, located immediately adjacent to the current PARCEL C (see MCP attached as *Exhibit H*), and is requesting to add that land area to the CPD.
- Amending the existing Matanzas Inn CPD with the specifics of this request will have no impact on the intent of Chapter 34.
- As discussed in the analysis section of the staff report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within the Pedestrian Commercial future land use category and the Pre-Disaster Buildback, Hazard Mitigation and Floodproofing policies in the Comp Plan.
- The request meets or exceeds all performance and locational standards set forth for the proposed use.
- The subject property is currently a functioning Inn and restaurant, urban services are available and adequate for the proposed changes.
- The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- The requested CPD amendment will allow the property owner additional flexibility in phasing the project and the construction of new flood compliant buildings. The buildings will be required to

meet the commercial design standards and all other applicable codes. The requested uses are those found in the DOWNTOWN zoning district.

- The impact of the proposed amendments to the transportation network will be evaluated at the time of revision to the Development Order.
- LDC Section 34-216 and the request of the CPD amendment included:
 - Remove a parcel of land (the 'Old San Carlos Parcel') from the existing CPD
 - Include a platted lot ('Lot 15') into PARCEL B
 - Convert the 4 existing dwelling units (located on Lot 15) to 12 hotel/motel guest units
 - Revise the phasing plan for expansion of the restaurant and redevelopment of the hotel/motel, add a phase B1 that proposes a second story on the western half of the southernmost hotel/motel building, and clarify that the phases of redevelopment may proceed in any order depending on the market
 - Deviation from the requirements of LDC Chapter 30 to adopt a unified sign package for the entire resort.

He reported that staff recommended that the mix of uses on the subject property continued to remain appropriate at the subject location and that staff found that the conditions, as recommended, were sufficient safeguards to the public interest. He added that staff conducted a review of all previously approved conditions from former approvals by Town Council; and the conditions of approval included with the Staff Report reflected staff's goal to simplify recommended project approvals. Staff found that all conditions to the recommendation of **approval** were reasonably related to the proposed project's impacts on the surrounding neighborhood; and that the proposed amendments to the existing Matanzas Inn CPD are consistent with the Town's Comprehensive Plan. He stated staff recommended **approval** with 10 conditions and 15 deviations and added staff was amenable to the additional language to Deviation #6 as proposed by Mr. Murphy (Deviation #6 – add language indicating “*with dimensional regulations allowing 90° parking spaces, 16’ deep, and 8.5’ wide, and a 2-way drive aisle 19’ wide*”).

Discussion was held concerning the dimensions in the original CPD average for the guest units; consideration of a conceptual landscape plan; and the landscape buffers depicted on the Master Concept Plan.

Public Comment opened.

Gayle Manor, resident, explained she would be opposed to approval of the 'open-container' for all of the subject property since there was a dock that went halfway down the canal. She noted her concern about any member of any board referring to someone's home in an offensive manner.

Attorney Uhle distributed information to the LPA.

Jim Shenko, resident, indicated he did not oppose change. He addressed the '25% enclosed underneath' and that he did not mind using that space for the office or storage but was concerned about accessory uses. He described his concerns with the 'open-container' for the pool area and how it could impact neighboring residential; the newly constructed chickee hut; the music area and potential noise issues; and an electric guitarist located on the seawall who plays on Sundays. He reported, as a general rule, Matanzas Inn was a good neighbor; however, he had three issues with what was being proposed:

1. Noise
2. Setbacks
3. Density

He offered some historical background on the subject property; and continued to review his concerns regarding noise issues and the location of the pool as it pertained to impacting the surrounding residential neighborhood with the subject site. He recommended no outdoor entertainment at the Matanzas Inn.

Attorney Uhle, representing Mr. Shenko, recommended and reviewed some changes to the Staff Report:

- Restaurant – go back to what was proposed in 2003 which would be to require all of the entertainment to be done within a fully enclosed building or if barring that, enclose the portion that abuts the single-family area.
- Hotel – concerns regarding consumption of alcohol around the pool; prefer to see restrictions regarding the use of the pool after 9:00 p.m.; no COP or sales of alcohol in the building closest to his client's property. He addressed the increasing intensity of the property; the changing mass of the building.

Nancy Witham, resident, echoed the comments by the previous speakers. She discussed her concerns regarding 'large permanent structures' constructed on a canal facing houses; traffic congestion, and problems with noise.

Tracey Gore, resident, talked about 'recasting' deviations. She noted that Matanzas Inn was a good commercial neighbor; however, she explained her issues regarding noise and setback at the subject property. She questioned a photograph of the subject property; and offered comments regarding 'enclosed dining'. She addressed the narrative of the Comprehensive Plan amendment and noted that the issues of noise and setback were impacting residential areas.

Public Comment closed.

Ms. Plummer questioned the setback on the new construction.

Planning Coordinator Overmyer reported on the Master Concept Plan the setback for Phase 'A' provided 15' to the seawall, 17.3' as measured to the property line. He added the seawall was built a few feet into the deeded property and nothing could be backed up without losing parking spaces. He noted the previous Master Concept Plan was Exhibit 'H' and for the existing office there was a 15' setback and for the motel it was 21.3'.

Chair Zuba recognized Mr. Murphy in the audience to address public comments.

Mr. Murphy reported the new chickee hut had been permitted and was an allowable structure on the property; and expressed his thoughts on noise issues not only at the subject site but throughout the Town which he felt needed to be addressed legislatively. He added the Applicant was open to LPA suggestions to Town Council for a buffer.

Vice Chair Shamp questioned if there were hours of use for the pool.

Mr. Speirn-Smith responded in the affirmative; and added he believed the hours were from 10:00 a.m. to 10:00 p.m. He noted the new chickee hut was used for dining 90% of the time, and he intended to install more on the subject property as 'gathering places'.

LPA Attorney Rooney questioned if it was the Applicant's request to transfer density from one parcel to another or were they looking to 'kill and combine the lots' and essentially aggregate the density on a single parcel.

Mr. Murphy responded they were aggregating the parcels, if approved; and removing the parcel that was no longer under unified control and then transferring within the property the density currently existing on the new parcel to Parcel 'A' and then ask for the multiplier for dwelling units to guest units to be applied and the deviation for the square footage.

LPA Attorney Rooney explained the purpose of his question to the LPA and pointed out the LPA may want to consider a recommendation to Council that they address the Findings on each issue before approving the overall CPD.

Discussion was held on aggregating the site and the possible elimination of parcel lines.

Mr. Durrett indicated his support of the proposed request; however, he noted his concerns regarding noise. He asked if the Applicant would consider enclosing their music.

Mr. Murphy responded in the affirmative; but pointed out that the majority of the restaurant was outside.

Discussion ensued regarding the issue of outdoor noise/music and buffers; the lack of addressing buffering of a canal in the LDC; the majority of the restaurant located outside; mitigations for noise (i.e. separation of hours for indoor/outdoor entertainment, format of entertainment); and the Matanzas Inn as a good neighbor.

Vice Chair Shamp outlined her five concerns with the CPD request:

1. COP not to be on the entire parcel; currently a Restaurant COP existed at the site.
2. Same intensity to be approved as previously.
3. Noise/entertainment – specify locations.
4. Specify commercial uses.
5. Signs deviations requested.

Chair Zuba discussed potential difficulties regarding how to impose restrictions concerning noise/entertainment issues; commented that he agreed with Vice Chair Shamp's concerns about COP, parking, and density/intensity of uses.

Vice Chair Shamp explained the use specification should state use for 'storage and office'.

Chair Zuba indicated he did not have the same concerns about the signs as Vice Chair Shamp.

Ms. Plummer concurred that COP should not be allowed in the parking lot. She questioned the hours of operation for the neighboring commercial establishment; and offered suggested hours for the pool (closing at 10:00 p.m.), outdoor COP and serving (no serving or entertainment after 10:00 p.m.); no alcohol at the pool after 10:00 p.m. She explained she supported a retail space for the first floor space.

Discussion ensued regarding COP at the pool.

MOTION: Vice Chair Shamp moved to recommend approval of the DCI2013-0002 Matanzas Inn CPD Amendment request subject to the 10 conditions and 15 deviations.

LPA Attorney Rooney offered wording for the motion as follows:

"Approve an amendment to the Matanzas Pass Inn CPD approving the deviations subject to conditions listed in the staff report and based on the recommendations and testimony provided during the Public Hearing finding that the Applicant has met all required Findings of Section 34-85 and 34-216 of the Land Development Code."

He added the LPA could then decide if they wanted to include the Applicant's oral amendment to deviation #6, and then decide which deviations the LPA specifically wished to cancel or add.

AMENDMENT: Motion maker amended the motion to include the recommended language by LPA Attorney Rooney and Policy 4-C-8 of the Comprehensive Plan for the transfer of development density; and the changes as follows:

- Deviation #4 - Deviation from LDC Section 34-1803(a)(1) to allow guest units to average ~~1000~~ 800 with a maximum of 1,200 square feet in compliance with the proposed Schedule of Uses.
- Deviation #6 - Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 34, Division 26, Parking: LDC Sections 34-2015 (location and design) and 34-2016 (dimensional requirements; delineation of parking spaces) to allow the parking plan delineated on the MCP - add language from the Applicant indicating "with dimensional regulations allowing 90° parking spaces, 16' deep, and 8.5' wide, and a 2-way drive aisle 19' wide".
- Deviation #9 - Total commercial identification sign area not to exceed 139 square feet total. Other permitted signs not requiring a permit as provided in LDC Chapter 30 or otherwise permissible, allowed.
- Recommended Conditions of Approval #2 – Allowable uses are limited to the approved Schedule of Uses – See attached *Exhibit G*; add for downstairs be limited to storage and office.
- Recommended Conditions of Approval #4 – All outdoor entertainment must cease by 10:00 p.m. – and add entertainment should be in the public spaces but not the parking lots.
- Recommendation to Council that the COP would be limited to the restaurant and outdoor deck area or grass areas and not at the pool or parking lot and insure they are enforced.

SECOND: Ms. Plummer.

Ms. Plummer requested that 'retail' be included in the schedule of uses for the first floor area.

Discussion was held concerning the allowable uses for the downstairs area.

AMENDMENT: Motion maker amended the motion - Recommended Conditions of Approval #2 – to add *for downstairs be limited to storage, office, and resort-accessory uses.*

Discussion ensued regarding the motion - Deviation #4 -) to allow guest units to average ~~1000~~ 800 with a maximum of 1,200 square feet.

VOTE: Motion approved; 6-0 (Mr. Steele was excused).

Chair Zuba closed the Public Hearing.

C. Ordinance 14-XX – Outdoor Display

Planning Coordinator Overmyer reported the proposed ordinance was the result of the working group of Town staff and merchants located in the downtown area.

Public Comment opened.

Tracey Gore, resident, explained she was not concerned with 'what was put out for display' rather her concern dealt with new language pertaining to the 'enclosed dining' area. She noted that the LPA agenda listed the item as 'outdoor display' and the public would not have known from the item that it also dealt with a language change for 'enclosed dining'. She discussed her view that the new language contradicted the existing code as it pertained to enclosed dining and sale and service of alcohol.

Robin Thurston, resident, thanked the working group for keeping her business in mind and for keeping her in business as it pertained to the proposed amendments. She questioned, if approved, would she be required to install additional pavers which she was willing to do.

Planning Coordinator Overmyer expressed his belief that the additional pavers would be permitted.

Robin Thurston questioned if her license permit and her other vendors would remain the same.

Planning Coordinator Overmyer responded in the affirmative.

Robin Thurston questioned who would be the person to speak with about fines (code enforcement).

Planning Coordinator Overmyer stated he would work with Ms. Thurston on the question regarding code enforcement fines.

Discussion was held concerning #4 regarding coming into compliance for the sale of a business.

Doug Speirn-Smith reported he was representing Harbor House and explained the ordinance had no provision for a building that was constructed to the right-of-way in the downtown core to allow for any type of display concurrent with that retail use. He suggested allowing, under certain provisions, that the right-of-way would have some supporting display for an existing retail use.

LPA Attorney Rooney addressed Ms. Gore's comments and explained the ordinance was advertised as outdoor display was because the Town's regulations regarding outdoor dining were under the outdoor display section of the code.

Jim Shenko, resident, noted he hoped Matanzas Inn had no intention of having a 'bunch of retail shops'. He discussed his concerns regarding the definition of enclosed dining (i.e. common engineered roof, etc.) and how the proposed ordinance could impact private property owners.

John Richard, member of the working group, addressed comments raised by previous speakers that included but was not limited to the grandfathering in existing businesses.

Public Comment closed.

Mr. Durrett questioned the rules followed by the rest of the Town and reported the former Community Development Director indicated there would be a plan for the rest of the island. He recommended rules that would apply island-wide.

Planning Coordinator Overmyer explained the outdoor display regulations were found with the LDC for the downtown zoning district.

Discussion was held concerning the outdoor display regulations for the downtown zoning district versus other areas/centers in the Town; and the uniqueness of the various centers in the Town.

Chair Zuba recognized Bud Nocera in the audience.

Bud Nocera, Fort Myers Beach Chamber of Commerce, offered a historical perspective on the matter and why it addressed one particular area in the Town.

Discussion ensued regarding the historical background and events surrounding the proposed amendments.

Vice Chair Shamp discussed her concerns with Exhibit 'A', and the enclosed dining areas and adding Old San Carlos Boulevard. She believed there was a huge policy change within the proposed ordinance.

LPA Attorney Rooney concurred that outdoor dining would be allowed in the right-of-way but it would have to be leased from the Town.

Discussion was held concerning leasing the Town's right-of-way; pedestrian walkways; the proposed amendment and a resulting change to policy; and prior provisions in the code for outdoor dining.

Ms. Plummer expressed her apprehension with approving the proposed ordinance with the inclusion of an outdoor dining aspect. She suggested the proposed ordinance amendments should just be about outdoor display of merchandise and have an Exhibit 'B' that came back to the LPA about dining.

Discussion ensued regarding areas for an outside display at the Harbor House and neighboring businesses; and the definition of the enclosed dining area.

LPA Attorney Rooney noted outdoor dining was currently allowed by the code with administrative approval. He explained if the LPA wanted to pull out the outdoor dining more comprehensively staff could do so.

Vice Chair Shamp questioned who was currently impacted by the proposed ordinance.

LPA Attorney Rooney reported there were accruing fines and litigation pending related to the proposed ordinance. He pointed out the LPA could move forward on the outdoor displays and not the outdoor dining. He exclaimed the recommendation to Council could be to pull out all new language referencing outdoor dining.

Chair Zuba recognized Mr. Richard and Bill Shenko in the audience.

John Richard addressed outdoor display and the public right-of-way as it related to future owners.

Bill Shenko expressed his view on the great difference between outdoor merchandise displays and outdoor dining. He suggested the outdoor merchandise display language should address the matter island-wide.

Chair Zuba recapped the action could be to move the matter forward, and recommend the elimination of references to dining in order to consider them in more detail.

MOTION: Mr. Bodenhafer moved to move the outdoor merchandise display matter forward, and recommend the elimination of references to dining in order to consider them in more detail; second by Vice Chair Shamp.

Vice Chair Shamp requested staff included her recommendations regarding outdoor dining she noted earlier (i.e. the addition of Old San Carlos Boulevard as it related to dining, etc.).

VOTE: Motion approved; 5-0 (Mr. Steele was excused; Mr. Kakatsch was absent from the Chambers at the time of the vote.)

Adjourn as LPA and reconvened as Historic Preservation Board

Vice Chair Shamp reported at the May 5th Council Meeting she requested the Chapter 22 amendments go back to the Ad Hoc Committee to correct an error.

MOTION: Ms. Plummer moved to send the Chapter 22 amendments back to the Ad Hoc Committee; second by Mr. Zuba.

VOTE: Motion approved; 5-0 (Mr. Steele was excused; Mr. Kakatsch was absent from the Chambers at the time of the vote.)

Adjourn as Historic Preservation Board and reconvene as the LPA

V. LPA MEMBER ITEMS AND REPORTS

Chair Zuba – announced there would not be an LPA meeting in July.

Planning Coordinator Overmyer indicated there would be a full agenda in August for the LPA.

Vice Chair Shamp – noted in the past the agenda had an item that covered keeping track of agenda items and requested that be reinstituted. She also requested that the LPA reinstitute the habit of assigning a member to speak on cases that go before Council.

Mr. Durrett – no items or report.

Mr. Bodenhafer – no items or report.

Ms. Plummer – no items or report.

Mr. Kakatsch – no items or report.

Mr. Steele – was excused.

VI. LPA ATTORNEY ITEMS

LPA Attorney Rooney – no items or reports.

VII. COMMUNITY DEVELOPMENT ITEMS

Planning Coordinator Overmyer - no items or report.

VIII. ITEMS FOR NEXT MONTH'S AGENDA

No discussion.

IX. PUBLIC COMMENT

Public Comment opened.

Robin Thurston questioned the next step for the LPA recommendation.

Planning Coordinator Overmyer reviewed the next step(s) for the LPA recommendation to Town Council.

Public Comment closed.

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X. ADJOURNMENT

MOTION: Motion by Vice Chair Shamp, seconded by Ms. Plummer to adjourn.

VOTE: Motion approved; 6-0 (Mr. Steele was excused).

Meeting adjourned at 2:02 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

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